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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,137	SHEPHERD ET AL.	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-11 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3/23/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. A broad range or limitation together with a narrow range or limitation in the independent claim followed by a broad limitation in the dependent claim is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). In the present instance, claim 4 recites the broad recitation "consists essentially of a mixture of approximately 75% corn starch and 25% rice powder", and the claim 1 recites the narrow limitation of "coating the wet apple pieces with a corn starch and rice flour powder" which is the narrower statement of the range/limitation. The term "with" in claim 1 is narrower than the term "consists essentially of" in claim 4. Clarification and/or correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- Determining the scope and contents of the prior art.
- Ascertaining the differences between the prior art and the claims at issue.
- Resolving the level of ordinary skill in the pertinent art.
- Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "A vision of Apple Fries" (hereinafter called Granny's Apple Fries) in view of Yamazaki et al (US 3962355) ("Yamazaki") and Fischer et al (US 3723137) ("Fischer")

(The group referred as "Rejection A").

7. "Granny's Apple Fries" teach Granny Smith apples (claim.2) that are peeled and sliced with a french-fry cutter (mechanical cutter device) and dredged (dry coated) in cinnamon sugar among other seasonings prior to frying. Apple fries called "Granny's Apple Fries" were introduced on April 8, 2000. "Granny's Apple Fries" does not teach cleaning and coring the apple; spraying water on the apple pieces; coating the wet

apple pieces with a corn starch and flour powder; and freezing the coated apple pieces for storage.

8. Yamazaki teaches a method of making apple snacks by disclosing that it is conventionally known to clean apples by washing, then paring (peeling), coring, cutting into desired shapes and sizes and seasoning prior to frying (column 1, lines 38-45).

9. Fischer teaches method of making coated fried foods including fruits (Column 1, lines 33-37). The foods are dipped or sprayed (claim 3) or cascaded (Column 3, lines 40-50) with fluid (water) prior to being tumbled, cascaded or immersed in a dry coating mix (Column 2, lines 64-66 and Column 3, lines 40-50). Water is the preferred fluid applied to the food (Column 3, lines 14-15). The dry batter composition taught by Fischer contains cornstarch, corn flour and rice flour as recited by the applicant in claim 1. The food product subsequent to being rolled in dry coating matter can be fried immediately or can be frozen and shipped prior to frying (Column 2, lines 18-20 and Column 4, lines 10-15).

10. It would have been obvious to the one skilled in the art at the time of the invention to modify "Granny's Apple Fries" and include conventional preparatory steps for making fries such as cleaning, coring and dredging the apple slices in a dry flour combination of corn starch (flour) and rice flour before freezing and packaging the apple fries without frying as taught by Yamazaki and Fischer, in order to obtain a constant supply of consistent quality good apple fries that can be stored longer and shipped as frozen fries to markets far from the point of production and are still crisp yet tender at the point of consumption.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over "A vision of Apple Fries" (hereinafter called "Granny's Apple Fries") in view of Yamazaki et al (US 3962355) ("Yamazaki") and Fischer et al (US 3723137) ("Fischer") as applied to claims 1-3, (hereinafter referred as "Rejection A") in view of Higgins et al (US 5849351) "Higgins".

12. "Granny's Apple Fries" in view of Yamazaki and Fischer has been applied to claim 1 as described above.

13. In regards to claim 4, as recited the coating powder consists essentially of a mixture of approximately 75% cornstarch and 25% rice powder. Fischer teaches a coating composition for a fried fruit product where the coating comprises, cornstarch as well as rice flour, however Fischer does not specifically teach the proportion of the two components as part of the coating composition. Higgins teaches a coating composition for fat fried foods having a modified corn starch and rice flour in weight proportions of 10:1- 1:1 and preferably 10:1 to 4:1 (Column 3, lines 64-67). Thus the amount of cornstarch will vary between 50%-90% and rice flour will vary between 10%-50% by weight, which falls in the range recited by the applicant in claim 4.

14. Therefore, it would have been obvious to the one with ordinary skill in the art at the time of the invention to modify the amount of corn starch and rice flour in the coating composition of fried foods as taught by " Fischer" in view of teachings from Higgins, and in accordance with the recitation of the applicant because:

- The combination of cornstarch and rice flour in the ratio 10:1 to 1:1 prolongs the serving time of the fried foods like French fried potatoes (Higgins, Column 3, lines 54-63).
- The combination of cornstarch and rice flour coating is clear and does not obscure the natural appearance of the food (Higgins, Column 3, lines 54-63).

15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over "A vision of Apple Fries" (hereinafter called "Granny's Apple Fries") in view of Yamazaki et al (US 3962355) ("Yamazaki") and Fischer et al (US 3723137) ("Fischer") as applied to claims 1-3, (hereinafter referred as "Rejection A") in view of Higgins et al (US 5849351) "Higgins" and further in view of Sloan et al (US 5141759) "Sloan".

16. References of "Rejection A" in view of Higgins as applied to claims 1-4 above.

17. Claim 5 recites that the starch component of coating is 2 oz for every pound of apples, i.e., starch coating is approximately 10% by weight of the food product prior to frying In regards to claim 5, Fischer teaches the dripless dry coating mixture where the starch component up to 80% of the total dry ingredients (Column 4, lines 30-40) and specifically corn starch content is 63.5% (Column 5, lines 15-20). Fischer also teaches the use of rice flour in the dry coating composition however is silent as to the amount of rice flour. Therefore it was known to coat wet slices of fruits and vegetables in a mixture of cornstarch powder before freezing or frying.

18. In regards to claim 5, Sloan teaches fried coated potato product where the coating comprises of cornstarch (2-10%) as well as rice flour (2-10%) on dry weight

basis for the coating composition (Column 3, lines 50-60). As taught, optimal results of coated fried comestibles are obtained when the starch slurry between 9-25% by weight (Column 4, lines 1-45), according to Example II table 2 (Column 6, lines 14-25) the amount of dry starch matter in the slurry is 40%, therefore by the two numbers above the dry starch content of the slurry taught by Sloan would range in 4% to 10% as recited by the applicant in claim 5.

19. Therefore, it would have been obvious to the one with ordinary skill in the art at the time of the invention to modify the amount of starch on the fried foods as taught by "Reference A" as taught by Higgins, as in claim 4 above and apply the corn starch and rice flour mix to "Rejection A" in the ratio as taught by Sloan and as recited by the applicant, in order to obtain crispy fried food that does not form clumps during processing (Sloan, Column 4).

20. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over "A vision of Apple Fries" (hereinafter called "Granny's Apple Fries") in view of Yamazaki et al (US 3962355) ("Yamazaki") and Fischer et al (US 3723137) ("Fischer") as applied to claims 1-3, (hereinafter referred as "Rejection A") in view of Sloan et al (US 5141759) "Sloan".

21. "Rejection A" has been applied to claim 1-3 as described above.

22. Claim 6 recites that the starch component of coating is 2 oz for every pound of apples, i.e., starch coating is approximately 10% by weight of the food product prior to frying In regards to claim 6, "Rejection A" reference Fischer and Sloan have been applied as discussed above in regards to claim 5.

23. Therefore, it would have been obvious to the one with ordinary skill in the art at the time of the invention to modify the amount of starch on the fried foods as taught by "Rejection A" as in claim 1-3 above in the ratio as taught by Sloan and as recited by the applicant, in order to obtain crispy fried food that does not form clumps during processing (Sloan, Column 4).

24. Claim 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over A vision of Apple fries hereinafter called "Granny's Apple Fries" in view of Yamazaki et al (US 3962355) ("Yamazaki") and Fischer et al (US 3723137) ("Fischer") as applied to claims 1-3, hereinafter referred as "Rejection A" in view of Roberts et al (US 4889730) and Glantz et al (US 4559232) "Glantz".

25. In regards to claim 7-11 "Granny's Apple Fries" as described in regards to claims 1-3 are sliced as regular French fries (page 1) and Yamazaki teaches cutting apples in slices after coring which could either be considered a slice or a ring or if cut longitudinally would give either strips or wedges (columns 1 and 2).

26. Roberts teaches crisp snack products made out of fruits/ vegetables, including Granny Smith Apples (Column 4, line 40). Roberts teaches removing undesirable parts from the fruit/ vegetable and then cutting in pieces into variety of shapes, for example, cubes, slices, chips, strings (i.e., spirals) or grated pieces (Column 4, line 60- Column 5, line 10).

27. Glantz teaches processing of apples prior to frying and cutting in strips (Column 5, example IV) and wedge shapes (Column 6, example VII).

28. Therefore, it would have been obvious to the one with ordinary skill in the art at the time of the invention to modify the shape of apple from strips etc., as taught by "Rejection A" in claim 1-3 above, to the shapes taught by Roberts and Glantz by slicing the apple differently for making apple fries because it was notoriously well known at the time of the invention to cut the fruits and vegetables into various shapes and sizes depending on individual's desire. The cutting of apples in strips, cubes, wedges, rings and spirals would not have involved an inventive step, and do not provide patentable distinction to the claims. Thus the claimed invention is anticipated by the reference absent any clear and convincing evidence and or arguments to the contrary.

Remarks/ Conclusion

29. The prior art made of record as part of USPTO form 892 contains references that have not been relied upon in this office action but are considered pertinent to applicant's disclosure.

Wu et al (US 5648110) teaches the amount of rice flour in the coating desired should be 10-25%, which fall in the recited range of the applicant. Wu teaches that the rice flour concentration higher than 25% makes the French-fried product too tough while lower concentrations than 10% result in too little crispiness in the product (column 5, lines 45-62). Wu teaches the use of potato starch in amounts more than 50% and also teaches that potato starch can be substituted by other starches like corn, wheat or oat (Column 5, lines 62-67).

Makower et al (US 2738280) teaches general preprocessing steps of cleaning, coring and slicing as wedges etc in relation to apple and other fruits and methods of prevention of enzymatic browning.

Yasosky (US 5194271) teaches corn flour content in the recited range of the applicant appropriate for microwaveable food.

Stubbs et al (US 5622741) teaches the process of making potato fries including the shapes recited by the applicant.

Melvej (US 5997918) teaches corn starch based coating compositions for fried foods.

Villwok (US2002/0172754) teaches dry food coatings for fried foods with dextrin and hydrolyzed starch as major components.

Bengtsson et al (US 4272553) teaches process of making fried vegetables with dry coating and freezing after coating.

Silver et al (US 4547376) teaches process of making apple chips where it is common to spray apples with aqueous solution prior to further processing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla
Examiner
Art Unit 1761

4/27/06

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KEITH HENDRICKS
PRIMARY EXAMINER